

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosb
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

In the Matter of)
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)
 WATSON PHARMACEUTICALS INC.,)
 a corporation;)
)
 ACTAVIS INC.,)
 a corporation;)
)
 ACTAVIS PHARMA HOLDING 4 EHF.,)
 a private limited liability company;)
)
 and)
)
 ACTAVIS S.ÁR.L.)
 a limited liability corporat e entity.)

Docket No. C-4373

groups and affiliates in each case controlled by Watson Pharmaceuticals, Inc. (including, but not limited to, Watson S.á.r.l., Watson Laboratories, Inc. (a Florida Corporation) and Watson Laboratories, Inc. (a Nevada Corporation)) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Watson shall include Actavis.

- B. "Actavis" means (i) Actavis Inc., (ii) Actavis Pharma Holding 4 dnf. and (iii) Actavis S.á.r.l., their directors, officers, employees, agents, representatives, successors, and assigns, and their joint venture, subsidiaries, divisions, groups and affiliates in each case controlled by each of the following: (i) Actavis Inc., (ii) Actavis Pharma Holding 4 dnf. and (iii) Actavis S.á.r.l., (including, but not limited to, Actavis South Atlantic LLC, Actavis Pharma Mfg Pvt Ltd, and Actavis Elizabeth LLC) and the respective directors, officers, employees,

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondents fully transfer and deliver each of the respective Generic Products (Group One) Assets and Generic Products (Group Two) Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Businesses except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair such Generic Products (Group One) Assets and Generic Products (Group Two) Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the related Divestiture Product Businesses.
- B. Until Respondents fully transfer and deliver each of the respective Generic Products (Group One) Assets and Generic Products (Group Two) Assets to an Acquirer, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; the High Volume Accounts; customers; Agencies; employees; and others having business relations with each of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:
1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace all capital projects, business plans and promotional activities for such Divestiture Product Business;
 2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete

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transfer and delivery of the related Generic Products (Group One) Assets and Generic Products (Group Two) Assets to an Acquire

4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Divestiture Products at the related High Volume Accounts;

5. making available for use by each of the respective Divestiture Product Businesses funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including without limitation, the Generic Products (Group One) Assets and Generic Products (Group Two) Assets;

6. providing each of the respective Divestiture Product Businesses with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of such Divestiture Product Business; and

7. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such business by Respondents as of the date the Consent Agreement was signed by Respondents

C. Until Respondents fully transfer and deliver the Generic Products (Group One) Assets and Generic Products (Group Two) Assets to an Acquirer, Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year

2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide such Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay;

3. during the Divestiture Product Employee Access Period, not interfere with the hiring or employing by the Acquirer of Divestiture Product Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer including but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Divestiture Product Core Employee who receives a written offer of employment from the Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.E.3. shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the

Products to the employees associated with business related to those Retained Products that contain the same active pharmaceutical ingredient as the Divestiture Products; and

4. institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose;

provided, however, that the restrictions contained in this Order to Maintain Assets regarding the Respondents' use or conveyance provision, or disclosure of Confidential Business Information" shall not apply to the following: (i) information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by the Respondents; (ii) information that is required by Law or rules of an applicable stock exchange to be publicly disclosed; (iii) information specifically excluded from the Divestiture Product Assets; and (iv) all intellectual property licensed on a non-exclusive basis to the particular Acquirer.

Not later than a thirty (30) days from the earlier of the Closing Date or the date that this Order to Maintain Assets becomes final and effective, Respondents shall provide all of Respondents' employees and other personnel who may have access to Confidential Business Information related to the Divestiture Products notification of the restrictions on the use of such information by Respondents' personnel. Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such notification to the Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' registered office within the United States and shall provide an officer's certificate to the Acquirer.

being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents to the Acquirers under such agreement(s), which are incorporated by reference into this Order to Maintain Assets and related orders hereof.

- J. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Generic Products (Group One) Assets and Generic Products (Group Two) Assets except for ordinary wear and tear.

III .

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondent Watson has not opposed, in writing, including the reasons for opposing the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Watson of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of a Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and until the earliest of:
 - a. with respect to each Divestiture Product, the date the Acquirer of such Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture such Divestiture Product and able to manufacture such Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of the Respondents;
 - b. with respect to each Divestiture Product, the date the Acquirer of that Divestiture Product notifies the Commission and the Respondents of its intention to abandon its efforts to manufacture such Divestiture Product;
 - c. with respect to each Divestiture Product, the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the relevant Acquirer has abandoned its efforts to manufacture such Divestiture Product;

provided, however, that, with respect to each Divestiture Product, the Interim Monitor's services shall not exceed five (5) years from the Order Date;

provided, further, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
4. Subject to any demonstrated legally recognized privilege the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Order, including but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

H. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Destitute Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued to become final and effective, and every sixty (60) days thereafter until Respondents have fully complied with the following Paragraphs I.A, II.B., II.C., II.D., II.E., II.F.1. -II.F.3, II.G., II.J., II.K.1. - II.K.4, II.L., III.A., III.B. and IV.A. of the related Decision and Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply or are complying, and have complied with the Orders. Respondents shall submit at the same time a copy of their report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and things, (ii) transitional services being provided by the Respondents to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and
- B. a detailed description of the timing for the completion of such obligations.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph X of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent or
- C. any other change in a Respondent including, but not limited to, assignment and creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

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VI.

IT IS FURTHER ORDERED that, for pur